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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

Public Copy

MAY 22 2001

File: WAC-99-061-50050 Office: California Service Center Date:

IN RE: Petitioner:
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to § 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(O)(i)

IN BEHALF OF PETITIONER:

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann
Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner in this matter is described simply as a "contractor/broker," and the beneficiary is described as an engineer. The petitioner seeks O-1 classification of the beneficiary under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the "Act") as an alien with extraordinary ability in science, in order to employ her in the United States as a "project engineer" for a period of three years for an undisclosed salary.

The director denied the petition finding that the petitioner failed to establish that the beneficiary met the regulatory standard for an alien with extraordinary ability in science.

On appeal, counsel for the petitioner requested reconsideration of the decision arguing, in pertinent part, that the director failed to adequately consider the beneficiary's engineering awards and senior engineer ranking in her native China.

Section 101(a)(15)(O)(i) of the Immigration and Nationality Act provides classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability.

The issue raised by the director in this proceeding is whether the petitioner has shown that the beneficiary qualifies for classification as an alien of extraordinary ability.

8 C.F.R. 214.2(o)(3)(ii) defines, in pertinent part:

Extraordinary ability in the field of science, education, business, or athletics means a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor.

8 C.F.R. 214.2(o)(3)(iii) states, in pertinent part, that:

Evidentiary criteria for an O-1 alien of extraordinary ability in the fields of science, education, business, or athletics. An alien of extraordinary ability in the fields of science, education, business, or athletics must demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise by providing evidence of:

(A) Receipt of a major, internationally recognized award, such as the Nobel Prize; or

(B) At least three of the following forms of documentation:

(1) Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

(2) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;

(3) Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation;

(4) Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought;

(5) Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field;

(6) Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media;

(7) Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation;

(8) Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.

(C) If the criteria in paragraph (o)(3)(iii) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

8 C.F.R. 214.2(o)(5)(i)(A) requires, in pertinent part:

Consultation with an appropriate U.S. peer group (which could include a person or persons with expertise in the field), labor and/or management organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for O-1 or O-2 classification can be approved.

The beneficiary is described as a native and citizen of the People's Republic of China currently residing in the United States in H-4 classification. The beneficiary's resume reflects that she received a Bachelor's degree in engineering in 1982 from the Lanzhou Railway Institute in China, and it was stated that she has over fifteen years of experience as a professional engineer with textile companies in China.

The director fully reviewed the record in reaching her decision. Counsel's argument on appeal that the beneficiary's awards in China were not given due consideration is not persuasive. Awards and certificates of merit are common to many professional fields. The petitioner failed to submit any documentation that the beneficiary's awards in China are nationally or internationally recognized awards in the field of engineering. Moreover, the petitioner submitted no evidence that the beneficiary has any scholarly or professional publications, that there is any published material in professional or major trade publications or major media about the alien, that she has ever worked in a critical capacity in an institution with a distinguished reputation, or that she has commanded a high salary for her work.

The extraordinary ability provisions of this visa classification are intended to be highly restrictive. In order to establish eligibility for this classification the statute requires proof of "sustained" national or international acclaim and a demonstration that the alien's achievements have been recognized in the field of endeavor through "extensive documentation." The petitioner has not established that the beneficiary's abilities have been so recognized. The record does not demonstrate that the beneficiary is "one of the small percentage who have arisen to the very top of the field of endeavor" pursuant to 8 C.F.R. 214.2(o)(3)(ii).

In addition, the statute requires that the proposed position underlying the petition for O-1 classification be one that requires an alien of extraordinary ability in the sciences. While the petitioner failed to disclose the actual duties of the proposed position or its field of endeavor, documentation submitted reflects that the petitioner is a real estate developer. The record does not establish that the position of a "project engineer" for a real estate developer requires an alien with extraordinary ability in the sciences. Furthermore, the petitioner failed to submit the requisite labor consultation verifying the nature of the work to be

done and the alien's qualifications. For these reasons as well, the petition may not be approved.

The denial of this petition is without prejudice to the beneficiary pursuing any other immigration benefit for which she may be eligible.

The burden of proof in these proceedings rests solely with the petitioner. § 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.